

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WUZI JIAO, on behalf of himself and others
similarly situated,

Plaintiff,

- against -

**ORDER ADOPTING REPORT
AND RECOMMENDATION**
16-CV-2694 (RRM) (RML)

KITAKU JAPANESE RESTAURANT, INC., *et al.*,

Defendants.

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ROSLYNN R. MAUSKOPF, Chief United States District Judge.

On May 27, 2016, plaintiff Wuzi Jiao, who had worked as a delivery person at a Queens restaurant from October 1, 2014, to May 6, 2016, commenced this action on his own behalf and on behalf of others similarly situated, alleging that the corporations and individuals who owned and operated the restaurant during that period violated the minimum wage and overtime provisions of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§201, *et seq.*, and the New York Labor Law (“NYLL”). In late June and early July 2016, plaintiffs Guanzhuo Chen and Yong Zhan Huang – both of whom had been sushi chefs at the restaurant – filed forms indicating their consent to join the collective action. (See Consent Forms (Docs. No. 7–8).) Thereafter, the complaint was twice amended to, among other things, implead or dismiss defendants.

The Second Amended Complaint (Doc. No. 57) – which was filed on July 10, 2018, and remains the operative pleading – names nine defendants: six corporations – Kitaku Japanese Restaurant, Inc.; Gin Kitaku, Inc.; Yuki Kitaku, Inc.; Spring Kitaku, Inc.; Luna Cuisine Inc. and Rice K, Inc. – and three individuals – Yi Gin Chin, Xiu Chen, and Siu Kwan Wong a/k/a Shiu Kwan Wong. None of these defendants answered or otherwise responded to the Second Amended Complaint. Accordingly, on August 23, 2019, plaintiffs moved for a default judgment

with respect to all nine defendants. By order dated August 28, 2019, the Court referred that motion to Magistrate Judge Levy for a report and recommendation (“R&R”).

On March 13, 2020, Magistrate Judge Levy issued his R&R (Doc. No. 97). He recommended 1) that plaintiff Jiao’s motion for default judgment be granted as to all six corporate defendants and Xiu Chen, but denied as to defendants Yi Gin Chin and Siu Kwan Wong; 2) that Jiao be awarded \$133,874.82 in damages, plus pre-and post-judgment interest; and 3) that the claims of plaintiffs Guanzhuo Chen and Yong Zhan Huang be dismissed without prejudice. (R&R at 1, 38.) He also advised the parties that any objections to R&R had to be filed with the Clerk of Court within fourteen (14) days.

By order dated March 16, 2020, Magistrate Judge Levy directed plaintiffs to serve a copy of the R&R on the defaulting defendants by first-class mail and to electronically file proof of service with the Court within three (3) days. Plaintiffs complied with this order on March 18, 2020, mailing copies of the R&R to all defendants other than Yi Gin Chin and Siu Kwan Wong. (*See* Affirmation of Service (Doc. No. 98) at 1.) To date, none of the parties have filed any objections to the R&R.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error. Finding none, the Court adopts the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007). Accordingly, it is

ORDERED that the R&R is adopted in its entirety. The Clerk of Court is respectfully directed to enter judgment awarding damages in the amount of \$133,874.82, plus pre-and post-judgment interest, in favor of plaintiff Wuzi Jiao against defendants Kitaku Japanese Restaurant, Inc.; Gin Kitaku, Inc.; Yuki Kitaku, Inc.; Spring Kitaku, Inc.; Luna Cuisine Inc. and Rice K, Inc.; and Xiu Chen, jointly and severally; dismissing the claims of plaintiffs Guanzhuo Chen and

Yong Zhan Huang without prejudice, and dismissing all of plaintiffs' claims against Yi Gin Chin and Siu Kwan Wong. It is further

ORDERED that the Clerk of Court shall mail a copy of that judgment and this Order to all defendants, note that mailing on the docket sheet, and close this case.

SO ORDERED.

Dated: Brooklyn, New York
May 18, 2020

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
Chief United States District Judge